

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)	
OF DELMARVA POWER & LIGHT)	
COMPANY, EXELON CORPORATION,)	
PEPCO HOLDINGS, INC., PURPLE)	
ACQUISITION CORPORATION, EXELON)	PSC DOCKET NO. 14-193
ENERGY DELIVERY COMPANY, LLC AND)	
NEW SPECIAL PURPOSE ENTITY FOR)	
APPROVALS UNDER THE PROVISIONS OF)	
26 DEL. C. §§ 215 and 1016 (Filed June 18,)	
2014))	

**JOINT APPLICANTS' RESPONSE IN OPPOSITION
TO IBEW LOCAL 614'S INTERLOCUTORY APPEAL**

The Joint Applicants respectfully oppose the Interlocutory Appeal to the Commission (the "Appeal") filed on behalf of the International Brotherhood of Electrical Workers Local 614 ("IBEW Local 614"). In opposition to the Appeal, the Joint Applicants state as follows:

BACKGROUND

This docket concerns an application for approval of a merger of Pepco Holdings, Inc., and Exelon Corporation, filed June 18, 2014 (the "Application"). The merger is subject to approval of the Commission because Pepco Holdings, Inc.'s wholly owned subsidiary, Delmarva Power & Light Company ("Delmarva Power"), is a public utility regulated by this Commission. *See* 26 Del. C. §§ 215, 1016.

On July 8, 2014, the Commission entered PSC Order No. 8581, which governs the procedures for consideration of the Application by the Commission. Among other things, Order No. 8581 appointed Mark Lawrence to serve as the Hearing Examiner and set a schedule for consideration of the Application. Order No. 8581 "specifically delegated" to Hearing Examiner Lawrence the authority to grant or deny petitions to intervene. Order No. 8581 ¶ 2. Order No. 8581 also set forth a procedural schedule providing that "Petitions to intervene must be filed on

or before July 28, 2014” (Order No. 8581, Ex. A) (emphasis added), and directed that Hearing Examiner Lawrence conduct a mandatory scheduling conference on July 30, 2014 at the Commission’s offices. Specifically, Order No. 8581 states that “All potential parties must attend the prehearing conference.” Order No. 8581 ¶ 2 (emphasis added).

Contrary to the requirements of Order No. 8581, IBEW Local 614 did not file a petition to intervene with the Commission on or before the July 28, 2014 deadline.¹ Also contrary to Order No. 8581, no representative for IBEW Local 614 appeared at the mandatory pre-hearing conference.

On August 5, 2014, IBEW Local 614 filed a petition to intervene (the “Petition”) with the Commission. IBEW Local 614’s Petition, along with the earlier letter petition circulated by its President, establishes that IBEW Local 614 has a collective bargaining agreement with PECO Energy Company (“PECO”). PECO is not a party to the pending Application and indeed, is not regulated by the Commission.

The Joint Applicants filed a response in opposition to the Petition, maintaining that IBEW Local 614’s members work for PECO in Pennsylvania and accordingly, the issues IBEW Local 614 seeks to address in this docket are not properly brought before the Commission. Response at p. 3. The Joint Applicants further maintained that IBEW Local 614 failed to establish “good cause” for its untimely filing or for its failure to attend the mandatory pre-hearing conference. Response at pp. 3-4. The Joint Applicants’ response also established that the two locals of the International Brotherhood of Electrical Workers that actually do represent Delmarva Power employees – IBEW Local 1238 and Local 1307 – agree that the proposed

¹ IBEW Local 614’s President did hand deliver a letter petition for intervention on counsel for Joint Applicants on July 28, 2014. *See* Petition to Intervene Ex. A.

merger is in the best interests of Delmarva Power and its employees and support the Application. Response at p. 1.

On August 11, 2014, Hearing Examiner Lawrence issued Order No. 8613, denying IBEW Local 614's Petition. Among other things, Hearing Examiner Lawrence observed the record evidence indicating that the unions representing employees of Delmarva Power supported the Application. The Hearing Examiner also determined that PECO is not alleged to be a Commission regulated public utility, distribution company or electric supplier, and that IBEW Local 614's members work for PECO in Pennsylvania. The Hearing Examiner concluded that if IBEW Local 614 had a bona fide dispute with PECO, or PECO's parent company Exelon, such claims should be advanced in a proper forum and not the Delaware Public Service Commission. Order No. 8613 ¶ 14. Hearing Officer Lawrence found that "good cause" existed for IBEW Local 614's late application, but denied the Petition on the merits because it failed to adequately allege why IBEW Local 614's participation would be in the public interest, and because the claims IBEW Local 614 seeks to raise are outside of the Commission's review of the Application. Order No. 8613 at pp. 8-9.

On August 14, 2014, IBEW filed the pending Appeal. Because Order No. 8613 is well supported by the application of 26 Del. Admin. Code § 1001-2.9 to the facts presented, the Commission should affirm the Hearing Examiner's Order. Alternatively, the Commission should reject the Appeal, and IBEW Local 614's application for intervention, on the grounds that the Petition was untimely filed, IBEW Local 614's failed to attend the mandatory scheduling conference, and IBEW Local 614 has not otherwise established good cause to intervene out of time.

ARGUMENT

I. LOCAL 614's APPLICATION TO INTERVENE IT WITHOUT MERIT

Fundamentally, IBEW Local 614's Petition is flawed because it seeks to entangle the Delaware Public Service Commission into issues of labor relations between PECO and its employees. As Hearing Examiner Lawrence found, PECO is not a regulated public utility in Delaware and offers no direct services to Delaware customers. Accordingly, the collective bargaining agreement of PECO and IBEW Local 614 is not an issue properly addressed by the Delaware Public Service Commission.

In its Appeal, IBEW Local 614 places great emphasis on the fact that PECO's electricity infrastructure interconnects with Delmarva Power's infrastructure at various locations along the border of New Castle County, Delaware and Chester County, Pennsylvania. *See* Appeal at pp. 2-3.² Even considering IBEW Local 614's new exhibits and information, the very narrow overlap of facilities along the Delaware-Pennsylvania border provides no valid basis for this Commission to interject itself into labor issues between a Pennsylvania utility and its workers. Even if PECO employees in very limited circumstances provide service to facilities that, in turn, distribute power to Delaware customers, PECO is not regulated by the Commission. Costs of work performed by IBEW Local 614's members are recovered as part of PECO's rates charged to Pennsylvania customers, and are not recovered as part of rates paid by Delmarva Power customers. The relationship between Delaware's regulated utility – Delmarva Power – and PECO's employees, even when considering the limited facilities overlap pointed out by IBEW

² Local 614 acknowledges that it did not refer to such intermingled infrastructure in its Petition. Appeal at p. 3 n. 3. It is procedurally improper for IBEW Local 614 to appeal a matter to the Commission based on information it did not put into the record before the Hearing Examiner. *See, e.g., Tatten Partners, L.P. v. New Castle County Bd. of Assessment*, 642 A.2d 1251, 1262 (Del. Super. 1993) (citing *Wilmington Trust Co. v. Conner*, 415 A.2d 773, 778 (Del. 1980)) (appellate court will decline to hear issues not raised before administrative board).

Local 614, is far too attenuated to warrant allowing intervention and requesting that this Commission interject itself into labor issues involving a company not under the Commission's jurisdiction.

Last, IBEW Local 614 invokes a generalized statement of the "public interest" as a basis for its intervention. Appeal p. 5. IBEW Local 614 provides no statement of any specific interest in the Application that is at issue in this docket. The Commission should not accept such an overly broad understanding of the "public interest" that would have it wade into issues of labor relations for utilities that are not regulated by the Commission.

II. IBEW LOCAL 614's PETITION TO INTERVENE IS UNTIMELY

Alternatively, the untimeliness of IBEW Local 614's Petition, together with the failure of IBEW Local 614 to appear at the mandatory pre-hearing conference, constitute sufficient grounds to deny the pending Appeal. IBEW Local 614 had more than ample time and opportunity to timely seek intervention. As noted by the Hearing Examiner in Order No. 8613, the Application was filed June 18, 2014, and the merger has been the subject of public discussion since late April. Order No. 8613 ¶ 2. Even if the confusion of IBEW Local 614's President concerning the requirements for filing warranted a finding of good cause for the late filing of the Petition, IBEW Local 614 offered no excuse for its failure to appear at the July 30, 2014 pre-hearing conference. The requirement that persons seeking to become parties appear at the hearing was expressly stated in Order No. 8581 and was clearly stated in the public notice of the concerning the Application. *See* Order 8581 ¶ 2 and Exhibit B. Failure to appear at the conference, or to seek an excuse for attendance, constitutes sufficient grounds to deny the Petition.

WHEREFORE, for the reasons stated above, the Joint Applicants respectfully request
IBEW Local 614's Appeal be denied in its entirety.

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August 18, 2014

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CERTIFICATE OF SERVICE

I, hereby certify that on this 18th day of August, 2014, that the within document was filed with the Public Service Commission, via DelaFile and mailed to:

Delaware Public Service Commission
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, DE 19904

I further certify, on this same date, I e-mailed a copy of the same to all of the recipients identified on the Service List. See <https://delafile.delaware.gov/Global/AdvanceSearch.aspx> (last visited August 18, 2014).

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